

Council/Agency Meeting Held: _____	City Clerk's Signature _____
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: 5/21/2007	Department ID Number: CA-07-13

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCILMEMBERS

SUBMITTED BY: JENNIFER McGRATH City Attorney

PREPARED BY: JENNIFER McGRATH City Attorney

SUBJECT: Adopt Ordinance Amending Huntington Beach Municipal Code Chapter 13.48 Relating to the Consumption and Possession of Alcohol and Public Intoxication within City Parks

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: The City Attorney is recommending that Huntington Beach Municipal Code Chapter 13.48 relating to Parks be amended as to Section 13.48.110, which regulates the consumption and possession of open and closed alcoholic beverages as well as public intoxication in parks within the City.

Funding Source: No funds required

Recommended Action: Motion to adopt Ordinance No. 3768, An Ordinance Of The City Of Huntington Beach Amending Chapter 13.48 Of The Huntington Beach Municipal Code Relating To The Consumption And Possession Of Alcohol And Public Intoxication Within City Parks.

Alternative Action(s): Do not adopt Ordinance No. 3768

Analysis: Currently, the Huntington Beach Municipal Code ordinances that regulate the consumption of alcohol in public are sections 9.44.010 (public places), 13.08.090 (beaches), and 13.48.110 (parks). However, HBMC section 13.48.110, which was last amended in 1980, also regulates the possession of both open and unopened alcoholic beverages of any kind and prohibits an intoxicated person from entering or remaining in a park.

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REQUEST FOR CITY COUNCIL ACTION

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As a general rule, state law preempts local regulation of the *possession* of alcoholic beverage containers. The California Constitution states: "the State of California . . . shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the State." Cal. Const. art. XX § 22. The California Constitution does not address the issue of consumption of alcohol. California Courts have interpreted article XX, Section 22 to mean that state law preempts local regulations dealing with possession of alcoholic beverages (closed or open) but allows cities to regulate the public consumption of alcoholic beverages. (*People v. Brewer* (1991) 235 Cal.App.3d 909, 911-12; *People v. Ramirez* (1994) 25 Cal.App.4th Supp. 1 (stating "the city has no authority to regulate the possession of alcohol in public places, including parks"); *People v. Butler* (1967) 252 Cal.App.2d 1053.)

The pertinent state laws that regulate the possession of alcohol in public places are found within the California Business and Professions Code. Section 25620 provides that if a city or county prohibits consumption of alcohol in certain publicly owned areas, any person possessing an open container in those areas is guilty of an infraction. Under this statute, where the City prohibits the consumption of alcohol in public parks, police officers may issue a citation for a violation of section 25620 to any person in possession of an *open* container. It should be noted that this section does not empower police officers to issue infractions for possession of *closed* containers in areas where consumption of alcohol is prohibited. However, section 25662(a) provides that any person under 21 years of age in possession of any *open or closed* container can be charged with a misdemeanor. Also, section 25608 prohibits the consumption, possession, sales, or delivery of any open or closed container on any public school property, with some exceptions.

As state law prohibits the City from regulating public intoxication or the mere possession of alcohol in public parks, Huntington Beach Municipal Code Section 13.48.110 should be consistent with state law.

Environmental Status: N/A

Strategic Plan Goal: C-2 Provide quality public services with the highest professional standards to meet community expectations and needs, assuring that the city is sufficiently staffed and equipped overall.

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Ordinance No. <u>3768</u> An Ordinance of the City of Huntington Beach Amending Chapter 13.48 of the Huntington Beach Municipal Code Relating to the Consumption and Possession of Alcohol and Public Intoxication within City Parks
5	2.	Legislative Draft of Section 13.48.110

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ATTACHMENT NO. 1

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ORDINANCE NO. 3768

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 13.48 OF THE HUNTINGTON BEACH MUNICIPAL
CODE RELATING TO THE CONSUMPTION AND POSSESSION OF ALCOHOL
AND PUBLIC INTOXICATION WITHIN CITY PARKS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 13.48.110 of the Huntington Beach Municipal Code is hereby amended to read as follows:

13.48.110 Alcoholic beverages. No person shall, within the boundaries of any public park within the City, consume any alcoholic beverage of any kind whatsoever, except when attending a function operating under an alcohol permit issued in accordance with Chapter 9.84 of this code.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 200__.

Mayor

ATTEST:


City Clerk

INITIATED AND APPROVED AS TO FORM:

5.7.01

City Attorney

REVIEWED AND APPROVED:


City Administrator

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G-2A.5

ATTACHMENT NO. 2

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LEGISLATIVE DRAFT

SECTION 13.48.110PARKS

13.48.110 Alcoholic beverages. No person shall, **within the boundaries of any public park within the City**, consume ~~or have in his possession, custody or control, either open or unopened,~~ any alcoholic beverage of any kind whatsoever, except when attending a function operating under an alcohol permit issued in accordance with Chapter 9.84 of this code. ~~No intoxicated person shall enter, be or remain in any park.~~ (1026-2/64, 2043-4/76, 2451-11/80)

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